IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6134 OF 2007

Narayan Shivram Mohite .... Petitioner

versus

The Special Recovery
& Sales Officer..... .. Respondent.

Shri L.Ronald Castelino for the petitioner
Shri Ashish Kamath with Mrs. Meenakshi Mhapankar i/b. V.Deshpande & Co. for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH OCTOBER, 2007

P.C.;

1. The respondent bank has obtained the certificate under section 101 of the Maharashtra C0-operative Societies Act against the present petitioner who is a guarantor so also against the borrower. The salary of the petitioner has been attached to the permissible extent with a view to recover the amount. The petitioner's flat is also attached . Aggreived thereby the present petition has been filed by the guarantor contending that unless and until the bank first proceeds against the mortgaged property of the borrower, the bank cannot proceed against the property of the guarantor.

2. Perused Rule 107, which deals with the procedure

to be followed for recovery of the amount. The learned counsel for the bank has placed reliance on a judgment of the Supreme Court in the case of State Bank of India Vs. M/s. Indexport Registered and others reported in (1992) 3 S.C.C. 159 wherein the Supreme Court has categorically laid down that the decree holder/bank can execute the decree first against the guarantor without proceeding against the mortgaged property. The reasoning is that the guarantor's liability is co- extensive with that of the principal debtor. The Supreme Court has also held that the bank can sue only the guarantor without even sueing the principal debtor. If this be the position in law there is no substance in the petition and the objection to the recovery cannot be accepted.

3. In the result there being no merit in the petition the same is dismissed summarily.

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